

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 4076 of 2005

RAJENDRA KUMAR
V/S
STATE & ORS.

Mr. SACHIN ACHARYA, for the appellant / petitioner

Mr. RAJESH JOSHI, Mr. BL BHATI, AGA, for the respondent

Date of Order : 16.5.2006

HON'BLE SHRI N P GUPTA, J.

ORDER

The matter comes up for consideration of stay petition. However, at the request of all the learned counsel for the parties, the matter is being finally disposed of at this stage itself.

By this petition, the petitioner has prayed for quashing the order Annex.8, dated 16.6.2005, passed by the respondent No.2. Vide Annex.8, the ad-hoc promotion of the petitioner made on 31.12.97, and its confirmation by the Suitability Committee on 20.2.2001, have been quashed, being wholly without jurisdiction.

The case of the petitioner is, that he was appointed as Naka Guard, on temporary basis on 17.9.75, and was confirmed on 5.7.77, vide Annex.2. Then in the year

1989, he was promoted to the post of Nakedar, which is in the channel of promotion, and since then he continued to work as Nakedar, and became entitled to be promoted to the post of Assistant Revenue Inspector. So being eligible, he submitted a representation on 4.12.97, also pointing out that in the meantime also, he had worked as Assistant Revenue Inspector from time to time, and is regularly working as such since June 1996, therefore, it was prayed therein, that he may be promoted as Assistant Revenue Inspector. This representation, as appears from Annex.3, was submitted to the Chairman of the Municipal Board. Thereupon recommendations were made by the Executive Officer, and acting thereupon, the Chairman accorded promotion to the petitioner, on temporary basis, for a period of six months, and the formal promotion order was issued on 31.12.97, being Annex.5. The case of the petitioner is, that thereafter, a meeting was convened on 20.2.2001, to verify the qualification of the employees for promotion, and as per recommendations of this Committee, the petitioner was found to be eligible for the post of Assistant Revenue Inspector w.e.f. 31.12.97. Copy of the minutes of this meeting has been produced as Annex.6. The petitioner alleges, that he started working on the post of Assistant Revenue Inspector on permanent basis, and is working as such, since then. However, suddenly came to be

issued the order dated 16.6.2005, being Annex.8. This has been assailed, inter-alia on the ground of being violative of principles of natural justice, and having been passed without having given opportunity of hearing, arbitrary, and that, once the petitioner is promoted to this post, and is working since more than last 8 years, there is no justification to cancel the promotion, more so when there was no misrepresentation on the part of the petitioner. Relying upon Annex.9, it was contended, that the post of Assistant Revenue Inspector is lying vacant, and promotion to that post was well within the domain of the respondent-Municipality, and cannot be said to be without jurisdiction.

In the reply, filed on behalf of the respondent No.3, it is contended, that the promotion is contrary to the rules, being Rajasthan Municipalities (Subordinate and Ministerial Services) Rules, 1963. The provisions of Rule 23, 24 and 25 had been quoted in extenso. Then regarding Rule 27 also, it is pleaded, that the temporary appointment cannot be continued beyond a period of one year without referring to the promotion Board, and in any case, the term can be extended by the Director, from time to time, while in the present case, there is no such extension by the Director.

From the facts, appearing on record, it transpires

that, true it is, that the petitioner has been working on the post of Assistant Revenue Inspector, since passing of the order, Annex.5, but then, as appears from Annex.3, 4 and 5, and the pleadings contained in para-5,6, 7 and 8 of the writ petition, that the whole promotion matter was handled, and promotion was given by the Municipality itself. So far Annex.9 is concerned, a look thereat clearly shows, that thereby only financial and administrative sanction, for the post was conveyed, and the appointments were to be made by the Municipality concerned, in accordance with the provisions of the Rules of 1963. Thus, even by virtue of Annex.9, the promotions were not supposed to be made de-hors the provisions of Rules of 1963. Under Rule 23 of the Rules, a Promotion Board is provided, comprising of (i) The Director Local Bodies, or the Officer authorised on his behalf, like the Deputy Director, (ii) The President/Administrator of the concerned Municipality, and (iii) The Deputy Director of Region of the concerned Municipal Board; out of whom the Director, or his authorised Officer is to be the Chairman: then, is further specifically provided, that in absence of the Director, or his authorised Officer, the quorum shall not be complete. In this background, according to Rule 25, for making promotion, the Board is to submit the recommendations to the Promotion Board, and it is the Promotion Board, who is

to consider the candidature, and make recommendations, and on receipt of such recommendations, the appointment is to be made by the appointing authority. In the present case, as is clear from the pleadings contained in para 5 to 8 of the writ petition, and Annex.3 to 6, that the Promotion Board has nowhere even figured in the picture. Even a look at the Annex.6 shows, that it did not even purport to act as the Promotion Board, apart from the fact that there was no quorum, and the meeting can also not be said to be that of the Promotion Board as constituted by Rule 23, inasmuch as, one Member Smt. Vinita Shrivastava is the constituent No.3 of the Promotion Board, then So far Rajendra Kumar Tripathi is concerned, he is only Executive Officer, who is none of the constituents of the Promotion Board, and the first necessary constituent of the Promotion Board is not present. In that view of the matter, it cannot be said, that the petitioner was promoted to the post of Assistant Revenue Inspector in accordance with law, or by the competent authority.

That being the position, he is not entitled to hold the post, by seeking a direction from this Court, to the effect of quashing of the order, Annex.8. I seek support from the principles propounded by the Constitutional Bench of Hon'ble the Supreme Court, in State of Karnataka Vs. Uma Devi, reported in 2006(4) JT SC 420.

In that view of the matter, the writ petition is dismissed, being devoid of merit.

However, it is made clear, that this dismissal of the writ petition will not come in the way of the respondents, in making regular promotions, by undertaking regular promotional exercise, as contemplated by the rules, and consider the candidature of such candidates, as are eligible to be promoted in accordance with the rules.

(N P GUPTA), J.

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